Definition of Good Faith and Comparable Facilities

- Supports the FCC's definition of good faith negotiations. (3)

- For a microwave facility to be comparable, it should have: 1) the existing channel capacity of the original path; 2) equivalent reliability as the original path; 3) new frequencies with the same growth potential in terms of the ability to expand the capacity of the identified link in the new spectrum; and 4) the availability of back up facilities if, and only if, the existing facilities provide redundancy. Alternative media facilities should have: 1) the existing channel capacity of the relocated path and 2) the equivalent path reliability, growth potential, and routing capabilities offered by the existing microwave path. (3-4)

- Supports the FCC's conclusion that PCS licensees are not required to replace existing analog with digital equipment when an acceptable analog solution exists. If the incumbent chooses to accept a cash payment and build its own system, it should bear the costs of remedying any problems that might occur with the new system. (4-5)

Dispute Resolution

- The FCC should establish rules requiring that disagreements between incumbent licensees and PCS operators on the comparability of facilities and/or reasonable costs associated with any relocation, or any other controversy or claim arising out of or relating to the cost sharing plan, be settled by binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. The FCC should also establish rules regarding the qualifications of the arbitrators, method of payment, venue and any other items of potential concern to the parties. Notices of arbitration awards should be sent to the established cost sharing industry clearinghouse for proper implementation with appropriate copy to the FCC so it may track all filed cases of abuse and/or disputes. Failure of a PCS provider or microwave incumbent to comply with the terms of an arbitral award should result in sanctions imposed by the FCC. (10)

New Microwave Licensing in PCS Band

- The NPRM does not address the critical issue that incumbent licensees with secondary status are not eligible for relocation rights at all. The FCC must clarify this ambiguity concerning an incumbent's eligibility for relocation. (9)

Twelve-Month Test Period

- Agrees with the FCC that the test period should commence from the time the incumbent commences operations of its new system. The incumbent should be required to return its license to the FCC upon cutover to the new system. Permitting incumbents to retain their licenses during the test period will only cause confusion as to when the test period expires. (5)

- The FCC should make clear that the test period is fully waivable by contract. (5)

- If the incumbent is being paid cash in order to relocate its system or is designing its own system, the test period should not be available because the incumbents and not the PCS licensees will be in control of making their facilities comparable. (5-6)

SPRINT TELECOMMUNICATIONS VENTURE

Interest: PCS provider

Cost Sharing

- Generally supports the FCC's cost sharing proposals. (23)

Use of Formula

- Supports use of cost sharing formula proposed by the FCC. Agrees that T_1 should be based on the date that the PCS relocator obtained its reimbursement rights. A fixed date would be unfair to the PCS relocator because the cost would be depreciated before the PCS relocator had moved the link and benefitted from the relocation. (28)

Compensable Costs

- See comments under "Reimbursement Cap."

Sunset Period

- Supports the FCC's chosen sunset date. The clearinghouse should be dissolved when the last PCS licensee with cost sharing responsibility has paid in full. (29)

Reimbursement Cap

- Supports cap of $250,000, but would allow premium payments to be reimbursed up to total expenses of $250,000. However, would allow actual documented expenses to be reimbursed if they are over the $250,000. (27)

Reimbursement Rights and Date of Obligation

- Supports the concept of reimbursement rights to be administered by the clearinghouse. All PCS licensees activating base stations would be required to file a PCN with the clearinghouse. If a new base station triggered a cost-sharing obligation, the clearinghouse would notify the PCS licensee of its obligation to provide reimbursement. (29)

- Reimbursement should not be required prior to commercial activation of the base station but should be due upon activation. If reimbursement is not made within ten days, the FCC should consider imposing forfeitures and even requiring that the base station be shut down. After a violating licensee has complied fully with its obligations, the base station could be reactivated. (29-30)

Interference Standard and Trigger for Obligations

- Supports use of "Proximity Threshold" used in a private agreement by commenter and several other PCS licensees to determine cost sharing obligations because it is more clear-cut and easy to apply. It is also less expensive and enables future licensees to more accurately evaluate their reimbursement obligations. For detailed explanation, refer to summary of comments of GTE Service Corporation. (25-26)

Installment Payments Eligibility/Requirements

- Endorses the installment and interest proposals set forth in the NPRM for designated entities and UTAM. (30)

Role of Clearinghouse

- Supports the concept of a not-for-profit clearinghouse to administer the cost sharing plan. Use of the Proximity Threshold would allow the clearinghouse to determine easily the reimbursement responsibility from the PCNs it receives and notify PCS licensees of their responsibilities. It should be funded from PCS relocators and subsequent PCS licensees. (30)

Dispute Resolution

- Disputes should first be brought to the clearinghouse. If they cannot be resolved by the clearinghouse, they should be brought to alternative dispute resolution. (30)

Private Agreements

- The commenter is party to a private cost sharing agreement. Such agreements should expedite the cost sharing process, and the FCC should clarify that voluntary contractual arrangements under which PCS licensees agree to share costs that differ from the FCC's rules should be valid. (31)

Relocation Rule Modifications

Voluntary Negotiation Period

- The FCC should issue a public notice warning that during the voluntary negotiation period bad actor conduct (bad faith negotiations) is inconsistent with incumbents' status as FCC licensees and could jeopardize their licenses or lead to other penalties. (10)

- The voluntary and mandatory negotiation periods should be collapsed into one "good faith negotiation period" to eliminate the incentives for irresponsibility built into the voluntary negotiation period. PCS licensees and incumbents should be required to negotiate in good faith throughout the period. (17)

- If the FCC maintains the voluntary negotiation period, it should set a standard that a request for a premium of more than 20% above actual relocation costs constitutes bad faith negotiations. If an agreement is not concluded by the end of the first year of the period, the standard should be reduced to 10%. If cases in which the cumulative costs of these 20% premium deals became prohibitive, the PCS operator could hold off on relocating the less important links until the mandatory negotiation period kicks in. (20)

Definition of Good Faith and Comparable Facilities

- Supports FCC's proposed clarification of the meaning of "good faith". (18)

- Even if incumbents negotiate in bad faith, they should receive full-cost reimbursement to comparable and appropriately reliable facilities. However, a PCS licensee should be permitted to file a petition for involuntary modification of the license of any incumbent that refuses to negotiate or negotiates in bad faith. This would protect incumbents but also allow PCS licensees to initiate service without being held up for years on end by bad-faith negotiating tactics. (21)

- Microwave incumbents should be required to respond promptly (within 45 days) to PCS licensee requests for relocation by providing complete and specific information about their needs for comparable facilities, considerations affecting engineering and frequency coordination, and costs. If the incumbent has refused to accept the PCS licensee's offer of a comparable system within 120 days, the PCS licensee should be permitted to file a relocation application on behalf of the incumbent. This is consistent with other FCC policies. Any complaints by the incumbent can be resolved in this context. (22-23)

Other

- A growing number of microwave incumbents are abusing the relocation rules for their own selfish gain. Incumbents are seeking excessive and unreasonable payments four to five times greater than relocation costs. Gives examples of incumbent demands. (1-9)

- If PCS licensees are left unprotected against outrageous demands of bad actor incumbents, the value of yet-to-be auctioned PCS spectrum will be lowered significantly because of the need to factor in these excessive relocation costs. The relocation process and the need to negotiate with existing microwave licensees seeking exorbitant payments will undoubtedly delay the advent of competitive PCS services. If microwave incumbents are allowed to extort payments for relocation of their links during the vital voluntary negotiation period, these costs will be passed on to consumers in the form of higher prices. To the extent that suitable and fair relocation arrangements cannot be made during the voluntary period, coverage and quality of service will be drastically affected. (11-13)

- The FCC has the authority to amend its rules to ensure that incumbents do not take advantage of the relocation rules. Statements by Senators demonstrate that the FCC can and should revisit the transition rules if they are being abused. (15-16)

Exhibit A -- Advertisement in Washington Post for Cellular Service

Exhibit B -- Market Valuation for New York BTA and Suffolk County

Exhibit C -- UTC Incumbent Information Materials

Exhibit D -- Study on Costs of Delay to PCS Industry by Professor Paul Milgrom

Exhibit E -- Congressional Record Discussions on Microwave Relocation

Exhibit F -- Private Agreement on Microwave Relocation Cost Sharing

TELECOMMUNICATIONS INDUSTRY ASSOCIATION

Interest: Industry association representing fixed point-to-point microwave manufacturers

Cost Sharing

- Generally supports adoption of the FCC's cost sharing proposals. (2)

  Sunset Period

  - Supports ten year sunset on cost sharing program. (9)

  Reimbursement Cap

  - Supports cap proposed by the FCC. (8)

  Interference Standard and Trigger for Obligations

  - Strongly urges the FCC to use Bulletin 10-F and subsequent versions as the standard for determining PCS-to-microwave interference. (3-4)

  - Adjacent channel interference should be included as part of the cost sharing plan so as not to create a perception that adjacent channel interference cases are different from co-channel interference ones. (5)

  - Licensees must have flexibility to select the appropriate Bulletin 10-F interference criteria. (6)

Relocation Rule Modifications

  Definition of Good Faith and Comparable Facilities

  - In determining what constitutes comparable facilities, the FCC should establish a specific time period (i.e. 10 years) to evaluate annual operating costs for a proposed replacement systems and clarify that the lowest cost digital system proposal in ¶ 77 does not conflict with the FCC's established policy that microwave incumbents must receive comparable facilities regardless of their costs. (7-8)

  Public Safety Certification

  - Supports proposed criteria for "public safety" status. (9)

New Microwave Licensing in PCS Band

- Supports restrictions on granting new primary status fixed microwave licenses. (8)

Twelve-Month Test Period

- Supports the one-year trial period for incumbents to test their new facilities. (9)

Other

- Grants of STAs would facilitate the relocation process, particularly the relocation of parts of microwave networks. The FCC should adopt a policy for granting STAs in the relocation process without the kind of showing now required by the FCC's rules. (7)

Exhibit -- Draft of Bulletin 10-G

TENNECO ENERGY

Interest: Public utility (natural gas) microwave licensee with network spanning multiple PCS service areas

Cost Sharing

- Supports ensuring reimbursement to the initial PCS entities that pay the costs of relocating incumbent microwave licensees that would interfere with subsequent PCS entities who thereby would benefit from the relocation. (2)

Reimbursement Cap

- The Commission should not cap reimbursement at $250,000 (plus $150,000 if a new tower is required), since these costs are based on an outdated OET study that was done informally through word-of-mouth contacts. (12-13)
- Notes that the recently concluded agreement by AT&T and others does not contain any per link cap. (13)
- If the limit is arbitrarily set too low, the PCS licensee will be forced to absorb the difference or will be inclined to offer an inadequate system to the incumbent, neither of which is optimal. (13-14)

Relocation Rule Modifications

Definition of Good Faith and Comparable Facilities

- Believes proposal to clarify "good faith" to mean an offer of comparable facilities in the mandatory period is unfairly slanted in favor of PCS licensees; only a complete refusal to bargain should constitute "bad faith." (7-8)
- Obligations of PCS and microwave licensee should mirror each other and both should be bound by presumption of "good faith." (8)
- The proposal to define "comparability" would limit the quality of replacement systems available to incumbent licensees and, as a matter of equity, the Commission's plan should ensure licensees are made whole. (9-10)
- Being made whole means a seamless relocation of its entire system to another band utilizing suitable equipment of the type it would purchase today if it were voluntarily in the market for new equipment; i.e., state-of-the-art. (10-11)

- Objects to presumption that analog equipment should replace analog equipment, drawing an analogy to replacing a phone system with rotary phones, and also noting that such a presumption goes against spectrum efficiency policies. (11-12)

Compensable Costs in Voluntary/Mandatory Periods

- In light of the complexity of relocation challenges of companies like the commenter, the Commission should not restrict the scope of negotiations during the mandatory period. (8)

Secondary Status in 2005

- Opposes relegating incumbents to secondary status in 2005, which it states will deprive such licensees of their protection rights, create incentives for PCS licensees to postpone relocation indefinitely, create policies hostile to companies seeking expeditious system-wide relocation, and frustrate the Commission's band clearing goals. (14)

- If the FCC does relegate incumbents to secondary status in 2005, it should require that all incumbents have received firm offers by PCS licensees prior to that date. (14)

Other

- The commenter faces specific problems because it does not know whether the multiple PCS licensees will defer relocation of parts of its network until the end of their build-out, whether a relocation plan by PCS licensees will meet its needs to maintain the safety of its pipeline operation, and whether the standard of comparability will be fair and meet its needs. (6-7)

THE SOUTHERN COMPANY

Interest: Microwave operator

Cost Sharing

- Supports concept of cost sharing. (3)

Reimbursement Cap

- Opposes the FCC's suggested reimbursement cap. Although this is not a limit on what can be paid to incumbents, it could serve as an artificial cap on what a PCS relocator is willing to pay for the relocation of a microwave link without allowing the parties to bargain in good faith. Relocation costs are likely to be higher than the cost sharing cap in many cases. This cap also does not take into account that an alternative medium, such as fiber optics, may be necessary to provide a comparable system. (4-5)

- Recommends that a floating cap be used. The reimbursement figure could not exceed (1) the actual amount paid by the PCS relocator to move a 2 GHz link or (2) the total amount paid by a PCS relocator to move a link within its MTA when it is the sole licensee interfering with that microwave link ("Target Cost"), whichever is less. (5-6)

- If a dispute arises, the PCS relocator should be required to submit verified documentation of the relocation costs to the proposed clearinghouse which would allow only the actual relocation costs or the Target Cost to be reimbursed based on the cost sharing formula. The clearinghouse would still have the responsibility of assuring that no subsequent PCS licensee pays excessive relocation expenses while allowing true voluntary negotiations to take place. (6)

Reimbursement Rights and Date of Obligation

- Supports allowing a PCS relocator to be fully reimbursed without a cap limitation in instances where it relocates an incumbent whose endpoints are outside of its licensed service area. Also supports full reimbursement without a cap limitation where a PCS licensee relocates a link that is both outside of its market area and outside of its frequency block. (7)

Interference Standard and Trigger for Obligations

- Supports use of TIA Bulletin 10-F for determining interference. However, believes that adjacent channel, in addition to co-channel, interference should trigger reimbursement rights. (8)

Role of Clearinghouse

- Clearinghouse must be neutral and not an extension of the PCS industry. Does not believe that confidential business information should be submitted to the clearinghouse without an adequate guarantee of protection for confidential information. Therefore, the FCC should allow a verified affidavit documenting costs in a redacted form to be considered adequate to verify costs. (11)

Relocation Rule Modifications

Definition of Good Faith and Comparable Facilities

- A comparable system should have the same reliability as an incumbent's current system, including battery back-up power. (10-11)

New Microwave Licensing in PCS Band

- Opposes requirement that incumbents make an additional showing that its proposed modifications will not increase the relocation costs for a PCS licensees. This burden should rest solely with the PCS licensee since it is the only entity familiar with its proposed operations and how incumbent microwave operations may cause interference to it. Recommends that the PCS licensee avail itself of the 30-day Public Notice period to oppose any modification application that it believes will increase its relocation costs. By filing a petition to deny an application for modification, the PCS licensee can initiate and call to question any perceived increase in relocation costs. (13)

Secondary Status in 2005

- Opposes relegating incumbents still in the band in April 2005 to secondary status. Microwave incumbents, particularly those in rural areas, could be faced with interference from a late-arriving PCS licensee and will have no opportunity to be relocated. Incumbents should be allowed to continue operating with primary licensing status for the duration, including renewals, of their licenses or until relocated by a PCS licensee. (12)

Other

- At a minimum, during the mandatory negotiation period, PCS licensees should be required to relocate all the links in their frequency block in the service area so as to minimize the disruption to microwave networks. (8)

U.S. AIRWAVES INC.

Interest: Potential PCS C Block licensee

Cost Sharing

- A cost-sharing plan will speed relocation and fairly distribute costs among PCS licensees. (1)

Reimbursement Cap

- Supports proposed $250,000 cap (plus $150,000 if tower required). (2)

Use of Formula

- In order to reflect costs incurred by PCS relocators and later PCS licensees, formula should be modified to incorporate a cap as follows:

$$R_n = [\text{Minimum } ((C_c + C_t) \text{ or } C)]/N \times [120 - (T_n - T_1)]/120$$

R = amount of reimbursement
Cc = cap of reimbursement
Ct = cap for tower reimbursement (if applicable to this particular path)
C = amount paid to relocate link
N = next PCS licensee that would interfere with link
Tn = T1 plus number of months since relocator obtained its reimbursement rights
T1 = month that first PCS licensee obtained reimbursement rights (T1 variable does not impact result and should be deleted) (2-3)

- Depreciation should be calculated based on uniform date of April 1995. (3)

Compensable Costs

- Premium payments (including those paid to upgrade incumbents to digital) should not be reimbursable. (4)

Reimbursement Rights and Date of Obligation

- Relocators should get reimbursement rights through clearinghouse that would register name of relocator in place of incumbent. Does not support letting microwave licensee assign its microwave license to PCS licensee under § 94.47 as part of relocation agreement. (4-5)

Interference Standard and Trigger for Obligations

- Relocators should be entitled to 100 percent reimbursement up to allowable cap, less depreciation, for relocation of links outside of their frequency blocks or service areas. Reimbursement should only be paid when the subsequent PCS carrier will actually use the frequencies in question. (3-4)

- Agrees with use of TIA Bulletin 10-F standard. (5)

- If minimum coordination distance equations are to be used, then they should include the usage of terrain within the calculation equation, like the Service Area Boundaries calculations for cellular. (5)

- Reimbursement calculations should apply only to the occupied bandwidth associated with the transmitting bandwidths, not the receiving bandwidths. (6)

- Co-channel, but not adjacent channel, interference should be reimbursed. (6)

Installment Payments Eligibility/Requirements

- Designated entities should be allowed to use installment payments for reimbursement payments. (7-8)

- Opposes installment payments of reimbursement costs <u>to</u> designated entity licensees. (8)

Role of Clearinghouse

- Supports clearinghouse proposal. However, payment should not be required until date that PCS licensee begins commercial operations, and not during system testing. (6)

- Clearinghouse should be industry supported and administered. (6)

- Initial funding should be from contributions by all participating telecommunications carriers, based on a charge to existing PCS licensees on a per MHz/POP basis. (7)

- Future PCS licensees should pay a one-time administrative fee upon license grant. (7)

- Ongoing operational funding should be based on contributions by each PCS licensee seeking reimbursement under the cost-sharing plan, limited to each relocated link that is potentially compensable. (7)

- Clearinghouse should be central repository of all technical information for each relocated path. (7)

Dispute Resolution

- Carriers should be encouraged to resolve disputes through the clearinghouse, but should also be able to use ADR and finally the courts. (8)

- Failure to comply with cost-sharing obligations should not be considered by FCC when deciding on renewal and/or transfer of control or assignment applications. (8)

Relocation Rule Modifications

Definition of Good Faith and Comparable Facilities

- Supports FCC's clarifications on good faith. (9)

- The FCC should not at this time mandate penalties on either PCS licensees or incumbents that do not act in good faith. (9)

- Supports FCC clarification that compensation for comparable facilities is limited to the actual costs of a replacement system, not extraneous expenses such as consultant fees or upgrading to digital. (9)

UTAM, INC.

Interest: Non-profit frequency coordinator for the unlicensed PCS spectrum

Cost Sharing

- Supports the adoption of a cost sharing mechanism that would benefit microwave licensees and the PCS industry as a whole subject to several important clarifications to address the unique nature of unlicensed PCS. (2, 4)

  Use of Formula

  - Generally supports use of FCC's formula. (5)

  Compensable Costs

  - Premiums above the actual cost of relocation should not be included in the costs eligible for reimbursement. (10-11)

  - UTAM cannot afford and does not intend to pay premiums over the actual costs of relocation to microwave incumbents. If UTAM were forced to contribute to premiums PCS licensees may negotiate, its ability to finance the clearing of unlicensed spectrum would be jeopardized. (10-11)

  Sunset Period

  - The cost sharing plan should end for all PCS providers ten years after the date that the voluntary negotiation period commenced for A and B block licensees, April 4, 2005. (11-12)

  Reimbursement Cap

  - Supports the FCC's proposed cap on reimbursable costs of $250,000 per link plus $150,000 for any new towers needed. A cap is critical to ensuring that PCS providers are responsible in controlling relocation costs and that later market entrants are not burdened with unreasonably high payments as a result of negotiations in which they did not participate. The cap also allows UTAM and entrepreneur block licensees to calculate in advance their maximum potential cost sharing liabilities. (11)

  Interference Standard and Trigger for Obligations

  - A PCS provider should be entitled to 100% reimbursement for relocating any link outside its frequency block. The FCC's cost sharing plan generally does not take account of adjacent channel interference in the calculation of cost sharing obligations. The consideration of adjacent channel benefits should be excluded to simplify the cost sharing mechanism. To include such calculations in the cost sharing mechanism will increase the complexity and expense of cost sharing without any concomitant benefits. (9)

- The FCC should not differentiate between out-of-band relocations that are done because of adjacent channel interference and those done for other reasons, such as because the link is part of a larger network the PCS provider is relocating. Requiring 100% reimbursement to a PCS provider who relocates links outside its license band is a simple, easy rule to apply. To require that the relocator prove why an out-of-band link is relocated will complicate the clearinghouse's tasks while potentially increasing disputes among PCS providers. (9-10)

- The FCC's cost sharing rules should specify that the cost sharing obligations will arise when: (1) a county is cleared of microwave links in the unlicensed allocation and UTAM raises a Zone 1 power cap as a result of third party relocation activities or (2) a county is cleared of microwave links in the unlicensed allocation and UTAM reclassifies a Zone 2 county to Zone 1 status, which could not have been done without third party relocation activities. This "trigger" mechanism ties the incurring of cost sharing obligations by UTAM to the time at which licensed device manufacturers will benefit from increased deployment in a county because of microwave relocations. (2-3, 5-7)

Installment Payments Eligibility/Requirements

- Because UTAM's revenues are so limited and difficult to predict, UTAM should be able to elect at its discretion one of two options for each cost sharing obligation: (1) to pay using the FCC's deferred payment option or (2) to pay by dedicating the clearing fees raised from the additional deployment permitted as a result of the third party's relocation activities. If UTAM has sufficient funds in hand, it could commit to paying its obligations on the terms proposed by the FCC. However, if it has inadequate revenue to meet this schedule, UTAM should be able to pay its obligations from the fees raised as a result of the relocation. (8-9)

Dispute Resolution

- Supports the FCC's tentative conclusion that disputes arising out of implementation of the cost sharing plan should be resolved through alternative dispute resolution procedures. Requiring that parties seek appraisals from independent sources will also give a basis for negotiated settlements based on actual relocation costs. (12)

Private Agreements

- Private agreements between PCS providers should supersede the cost sharing rules. However, any party to a separate agreement would still be liable to other PCS providers for any obligations incurred under the FCC's cost sharing plan. (12-13)

Relocation Rule Modifications

Definition of Good Faith and Comparable Facilities

- Agrees with the FCC's construction of its rules to the effect that a PCS provider may voluntarily undertake to relocate entire microwave systems that include non-interfering links outside its service area but that such action is not required. (17)

- Supports the FCC's tentative conclusion regarding good faith bargaining. An incumbent that does not bargain in good faith during the mandatory negotiation period should lose its right to a comparable system and its system should be reclassified to secondary status six months after the determination. (14)

- The FCC's proposals properly define comparable facilities. Determining comparability based on technical factors that can be measured will minimize disputes. (15)

- Welcomes the clarification that PCS providers are not required to replace existing analog equipment with digital equipment when an acceptable analog solution exists. An incumbent who chooses to upgrade its system is entitled to receive the costs of a comparable system but should bear the additional costs and full responsibility for the installation and functioning of the new system. (16)

- Allowing parties to "trade-off" system parameters will infuse additional flexibility into relocation negotiations and permit an incumbent to receive a comparable system at the lowest possible cost to the relocator. (16)

Compensable Costs in Voluntary/Mandatory Periods

- Supports the FCC's tentative conclusion that comparable facilities be limited to the actual costs associated with providing a replacement system and that extraneous expenses, such as fees for attorneys and consultants hired without the advance approval of the PCS relocator, are not reimbursable during the mandatory negotiation period. (3, 15-16)

Public Safety Certification

- Supports the FCC's proposed procedures for identifying public safety licensees entitled to extended negotiation periods. Supports strict adherence to the FCC's definition of public safety and no expansion of the category of incumbents entitled to public safety status. (17-18)

Dispute Resolution

- Supports the FCC's proposal requiring parties unable to reach a compensation agreement six months into the mandatory negotiation period to obtain at least one independent cost estimate. (17)

New Microwave Licensing in PCS Band

- Supports the FCC's conclusion that further primary licensing of microwave operations in the 2 GHz band should be terminated now that relocations have begun. Also believes that additional secondary licensing will cause future difficulties and should likewise be terminated. Secondary licensees will inevitably suffer interference from and cause interference to continually expanding PCS operations. Urges that all future microwave activity be directed to the other bands that the FCC has designated for such operations, such as 4, 6, or 11 GHz. (3, 13-14)

Twelve-Month Test Period

- Agrees that the test period should run from the time the microwave licensee commences operations on its new systems. After operations have begun on the new system, the incumbent should be required to surrender its authorization to the FCC, which should hold it until the end of the test period. At that time, the FCC should make an announcement that the link has been successfully relocated. (18)

- Because some incumbents will prefer to build their own systems rather than have the PCS provider complete them, the FCC should clarify that the incumbents who choose to accept a payment from a PCS provider and then engineer the relocation of their own systems are not entitled to the twelve-month test period. Any test period for an incumbent that chooses to relocate its own system should be determined in the agreement between the incumbent and the PCS provider. (18-19)

- Microwave incumbents also should be allowed to waive the test period by contract with a PCS provider. (18-19)

Secondary Status in 2005

- Supports the FCC's tentative conclusion that microwave incumbents still operating in the 1850-1990 MHz band on April 4, 2005 should be made secondary on that date. Ten years is ample time for the necessary relocations to occur, particularly once a cost sharing plan is implemented. (19)

UTC, THE TELECOMMUNICATIONS ASSOCIATION

Interest: National representative on communications matters for the nation's electric, gas, water, and steam utilities, and natural gas pipelines

Cost Sharing

- Supports adoption of a cost sharing mechanism to promote the more orderly transition of incumbent systems. (5-6)

Use of Formula

- Opposes adoption of a mandatory formula for determining cost sharing reimbursements. The proposed formula is neither easy-to-administer nor equitable: it does not take into account non-cash settlements, multiple links, or associated compensation. The formula will discourage parties from entering into negotiations for compensation that may not fit the formula. (9)

- Instead, the clearinghouse should determine which licensees will benefit from the relocation of a particular link and those parties should determine how the costs should be divided. There should be a rebuttable presumption that the formula is reasonable but a PCS licensee disagreeing with its application could retain the opportunity to demonstrate why it is inequitable. If the formula is used, T_1 should be determined by the date that the relocation agreement is reached between the incumbent and the PCS licensees. (9)

Compensable Costs

- The FCC should not hinder negotiations by restricting the types or amount of compensation that are reimbursable. Does not support proposal to limit those costs subject to reimbursement. Recommends that the FCC adopt an accelerated depreciation schedule for these expenses so that licensees which benefit from additional payments by being able to deploy their systems more quickly will pay a share of these costs while those not deploying until much later will not. (10)

- Objects to the use of the term premiums to describe costs over and above actual relocation costs because it implies that these payments are bonuses not based on specific value elements in the relocation. In fact, these payments are based on elements such as an agreement to relocate quickly or relinquishing the right to re-occupy the original spectrum if the replacement facility is inadequate. (11 n.11)

Reimbursement Cap

- Objects to a cap being imposed on reimbursable costs. PCS licensees will be mindful of this cap during negotiations and will hesitate to pay relocation costs that exceed the cap since they will not be reimbursed for these amounts. If the FCC believes a cap is necessary, it should be raised so that it would ensure that at least 75% of the incumbent links could be relocated without exceeding the cap. In addition, if a cap is established, the FCC should have a procedure under which a PCS licensee could request a waiver of the cap for a particular link if it is very expensive to relocate. (14)

Reimbursement Rights and Date of Obligation

- Supports the creation of reimbursement rights and opposes allowing any entity that is not operating a microwave system and which has no intention of operating such a system to hold a microwave authorization. (15)

Interference Standard and Trigger for Obligations

- PCS licensees should be permitted to seek full reimbursement from licensees operating outside their territories or licensed frequency bands. The FCC should also permit reimbursement for relocation of paths that would be affected by adjacent channel licensees if it likely that the licensee would have caused interference to the relocated link. (7)

- Supports use of TIA Bulletin 10-F to determine cost sharing obligations between PCS licensees. (15)

- Disagrees with the FCC's initial determination that the administrative burdens outweigh the benefits associated with permitting cost sharing for links without at least one endpoint in the licensee's territory or which are affected by adjacent channel interference. The interference calculations can be done using Bulletin 10-F which is the same analysis that PCS licensees are required to undertake before deployment. (7)

Role of Clearinghouse

- Supports establishment of a neutral administrative body to manage the cost sharing process. The clearinghouse should be financed by the PCS industry, collect sensitive data regarding the cost and status of relocations, provide for incumbent participation, and maintain confidentiality of all information. It should be a neutral body distinct from the PCS trade organizations. (16)

- Urges that only the information that is absolutely necessary to the determination of cost sharing obligations be disclosed. Instead of submitting agreements, parties should submit a summary of the pertinent sections of their agreements, including any necessary data that the parties would need to determine cost sharing obligations. Both parties should be required to certify that the data submitted is accurate. (17)

Relocation Rule Modifications

Definition of Good Faith and Comparable Facilities

- Objects to the FCC's proposed definition of good faith. This requires incumbents to accept whatever a PCS licensee says is comparable facilities or accept the consequences. This limits the parties ability to bargain, particularly since many incumbents will not have a voluntary negotiation period because they will not receive a request to relocate during that period. Instead, the FCC should use the common definition of good faith which is "an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage." In addition, good faith should also encompass an obligation between the parties to meet, exchange views, honor reasonable requests for information, and give serious consideration to offers in a timely manner. (19-20)

- Supports the FCC's proposal to consider communications throughput, system reliability, and operating costs in determining comparability. The rules should allow that a party can make a showing on an individual case basis that some other factor(s) should be included. (20-21)

- Would clarify the definition of communications throughput as the amount of information transferred within the system for a given amount of time without compression. System reliability should be defined as the amount of time information is accurately transferred within the system. However, in no instance should an incumbent have to accept individual replacement components that are not equal to or superior to the existing individual components. A PCS license is in no position to second guess an incumbent's existing system design and choice of components. Concurs with the FCC's definition of operating costs. (22)

- Opposes the FCC's suggestion that a PCS licensee could unilaterally trade-off system parameters in order to achieve comparable replacement facilities. PCS licensees do not have sufficient knowledge or expertise regarding the incumbent's operations requirements to dictate appropriate trade-offs. Trade-offs should only be allowed at the option of the incumbents. (23)

- Although PCS licensees are only required to relocate links which would suffer interference, they must ensure a seamless transition which could include relocating other links or paying additional costs associated with integrating replacement links in different bands or employing different modulation techniques in order to preserve the system's overall integrity. (24)

- Opposes recommendation that incumbents bear the additional costs if analog equipment is replaced with digital equipment. Digital microwave equipment is the predominant technology available now for new microwave systems and is in many cases the de facto comparable technology. The FCC should not look solely to the incumbents' existing systems but also to what type of systems it would be reasonable for these incumbents to purchase today if they were to do so on their own. Similarly, depreciation of the incumbents' systems should not be taken into account. (25-26)

Compensable Costs in Voluntary/Mandatory Periods

- Opposes limiting reimbursable expenses to actual relocation costs. Utilities and pipelines do not normally budget for attorneys and consultants to engage in negotiations over the replacement of their existing facilities. These expenses are necessary for ensuring that incumbents emerge from this proceeding whole both operationally and financially. (24-25)

Dispute Resolution

- Opposes suggestion that parties who are unable to reach an agreement within one year after the commencement of the voluntary negotiation period should be required to submit an independent cost estimate since this is an affirmative obligation on the parties that does not currently exist. The proposed timing of the obligation ignores the fact that many incumbents have not and will not be contacted to negotiate relocation during the first year of the voluntary negotiation period. (27)

New Microwave Licensing in PCS Band

- Opposes changes to the FCC's established 2 GHz fixed microwave licensing policy. Incumbents must be permitted to make modifications to their systems to protect their vital communications. To prevent speculation, the FCC should license modifications on a primary basis as specified in the May 14, 1992 Public Notice: upon a showing that it would not increase the relocation costs for PCS licensees or upon a showing of a valid need for the modification. (29)

Twelve-Month Test Period

- Supports clarification that the test period runs from the time that the licensee commences operations on the new system provided that the system is fully operational rather than partially activated. The FCC should clarify that the test period will freeze when a problem is detected until it is resolved. (28)